

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHN HEARD,

Plaintiff,

v.

CV 13-1236 KG/WPL

WARDEN BRAVO, et al.,

Defendants.

**ORDER DENYING MOTION FOR LEAVE
TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Plaintiff John Heard filed a motion to proceed in forma pauperis (“IFP”) on appeal, pursuant to 28 U.S.C. § 1915. (Doc. 172.) Over the course of the last three years, Heard has vigorously litigated his claims against various staff members at the Guadalupe County Correctional Facility. Of his nine claims, Heard prevailed in the amount of \$75 on one claim, against one defendant. Judge Gonzales dismissed or granted summary judgment on all other claims, and denied leave to amend on multiple occasions. (*See* Docs. 18, 27, 62, 110, 116, 151, 152, 163.)

“In order to succeed on [a motion for leave to proceed IFP on appeal], an appellant must show a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *DeBardleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991). “An appeal may not be taken [IFP] if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “The Supreme Court has held that good faith is to be judged by an objective standard, for review of any issue ‘not frivolous.’” *Spearman v. Collins*, 500 F. App’x 742, 743

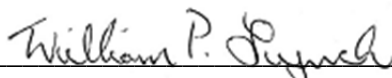
(10th Cir. 2012) (quoting *Coppedge v. United States*, 369 U.S. 438, 445 (1962)). “An appeal is frivolous when the result is obvious, or the appellant’s arguments of error are wholly without merit.” *Id.* (quotation omitted); *see also Thompson v. Gibson*, 289 F.3d 1218, 1222 (10th Cir. 2002) (noting that an appeal is frivolous if it “lacks an arguable basis in either law or fact”).

Heard’s financial statement shows that he is unable to pay the filing fee.

Heard states that his issues on appeal are “1st and 14th amendment violations and discrimination in a class of one also 2 counts of failure to exhaust not available” (Doc. 172), or alternatively, in his Notice of Appeal, that he appeals “from the Final Judgement entered in this action on July 19th documents 164 + 165 counts 2, 3, 4, 5, + 6” (Doc. 166).

Heard’s statement of the issues on appeal does not contain any argument of error regarding the Court’s dismissal of his claims. It does not summarize facts, restate causes of action, or make any attempt at isolating reviewable issues. Accordingly, I find that Heard’s appeal is not taken in good faith and therefore deny his motion to proceed IFP on appeal.

It is so ordered.



William P. Lynch
United States Magistrate Judge

A true copy of this order was served on the date of entry--via mail or electronic means--to counsel of record and any *pro se* party as they are shown on the Court’s docket.